

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONALD ROY CAIN,

Defendant-Appellant.

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UNPUBLISHED

June 21, 2005

No. 252599

Jackson Circuit Court

LC No. 03-000953-FH

Before: O’Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A police officer testified that he approached a woman outside a residence to investigate an accusation that she had stolen some money and put it in her purse. According to the officer, the woman told him that the purse was inside the house. The officer received permission from the homeowner, Albert Bush, to search the house for the purse. While in the residence, the officer observed defendant walking quickly from the kitchen to a bedroom. The officer followed defendant to ensure that he was not retrieving a weapon and observed him leaning into a closet. The officer testified that he received Bush’s consent to further search the residence and found crack cocaine in the closet. At trial, however, Bush denied giving his consent to search the home. Bush also affirmatively stated that defendant retrieved the controversial purse from the top of the home’s refrigerator. According to Bush, defendant handed the purse to him, and he then handed the purse to police. Defendant contradicted that testimony when he claimed that he saw the woman take something from the purse in the bedroom and place it in the closet. Defendant testified that he retrieved the purse from the bedroom.

Defendant first argues that his conviction must be reversed because the verdict was against the great weight of the evidence. We disagree. Generally, we review a trial court’s decision on a motion for a new trial for an abuse of discretion. *People v Lemmon*, 456 Mich 625, 648 n 27; 576 NW2d 129 (1998). “A trial judge does not sit as the thirteenth juror in ruling on motions for a new trial and may grant a new trial only if the evidence preponderates heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand.” *Id.* at 627. If the evidence conflicts, the credibility decision is left for the trier of fact. *Id.* at 646-647. In this case, the testimony of the investigating officer, while controverted, indicated that

defendant hid the cocaine in the closet. Therefore, the evidence does not preponderate heavily against the jury's finding that defendant possessed the cocaine. *Id.* at 627.

Defendant also argues that he was denied a fair trial because the trial court sarcastically questioned his contradiction of the homeowner's testimony. We disagree. Defendant failed to object to the trial court's remark, so we will not reverse his conviction unless we find plain error that affected his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). The statement followed defendant's assertion that he retrieved the purse from the bedroom rather than from the refrigerator as the homeowner indicated. The trial court asked, "So he's lying about that?" Nothing indicates that the trial court intended to convey partiality. Rather, the question merely probed defendant's veracity. Moreover, the trial court instructed the jury that its comments were not evidence. Under the circumstances, this one question did not deprive defendant of a fair trial. *People v Davis*, 216 Mich App 47, 52; 549 NW2d 1 (1996).

Affirmed.

/s/ Peter D. O'Connell

/s/ Bill Schuette

/s/ Stephen L. Borrello